IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27/06/2003

CORAM

The Honourable Mr. Justice P. SHANMUGAM
and
The Honourable Mrs. Justice R. BANUMATHI

Appeal Suit No.558 of 1986

Sengoda Goundar (died)

2. K.S. Pachiammal
3. K.S. Malaisamy Kounder
4. K.S. Kalidas .. Appellants

(Appellants 2 to 4 brought on
record as L.Rs. of deceased
sole appellant vide Order of
Court dt.4.4.2002 made in
CMP Nos.3240 to 3242 of 2002)

-Vs-

1. Commissioner
Hindu Religious and Charitable
Endowments Department
Madras-34.

2. Deputy Commissioner
Hindu Religious and Charitable
Endowments Department
Coimbatore.

3. Assistant Commissioner
Hindu Religious and Charitable
Endowments Department
Erode.

4. K.S. Kaliappan
5. A.P. Thavasi
6. S.P. Duraiswamy .. Respondents

PRAYER : Appeal against the judgment and decree dated 30.9.1985 made in O.S. No.150 of 1982 on the file of the Subordinate Judge, Gobichettipalayam.

!For Appellant : Mrs. Hema Sampath

^For Respondent : Mr. G. Sukumar,
Special Government Pleader
for H.R. & C.E. Department
(R-1 to R-3).

:J U D G M E N T

P.SHANMUGAM, J.

Plaintiff is the appellant. The suit was filed for a declaration that the suit property was only a Samadhi and not a religious institution and for permanent injunction. The suit was dismissed and the appeal is against this judgment and decree.

2. The case of the plaintiff is that the suit property is called Malaikaruppaswami Temple and is a Samadhi of the forefather of the plaintiff, namely Malaiswami; the said Malaiswamy had spiritual powers and became a Yogi and he had been treating the diseases of the villagers; he was worshipping Muneeswaram and Karuppannaswami; he attained Samadhi and was buried at the foot of Bargur Hills and a samadhi was constructed; subsequently, 'Bali Peetam' was constructed and images of Thavasi and Muni were constructed to guard his Tomb; for identification purposes, it is called 'Malaikaruppaswami Temple' and the Samadhi was treated as a sacred place by offering regular Guru Pooja; and therefore, the said Samadhi is not a religious institution. While so, according to the plaintiff, the Assistant Commissioner, Hindu Religious and Charitable Endowments Department appointed defendants 4 to 6 as Trustees for the suit Samadhi, treating it as temple and therefore, it had become necessary for a suit for declaration and permanent injunction.

3. The Hindu Religious and Charitable Endowments Department opposed the relief by filing a written statement inter alia contending that it is factually incorrect to state that the site in dispute is only a Samadhi. According to them, the matter had been concluded against the petitioner in an earlier proceedings initiated as early as in the year 1937 whereby the place was declared as a public temple and in subsequent civil proceedings between the parties in reference to this temple, it was treated as a public religious temple. According to them, the plaintiff has to prove that it is only a Samadhi. They therefore prayed for dismissal of the suit.

4. After considering the exhibits, the documentary and oral evidence, the learned Subordinate Judge came to the conclusion that the plaintiff is not entitled for a permanent injunction and that the suit temple is a public religious temple.

5. Learned counsel Mrs. Hema Sampath appearing on behalf of the appellants inter alia contended that the Sub-court had erred in holding that it is a public temple by an erroneous interpretation and rejecting the documentary and oral evidence. According to her, the appellant was never a consenting party to all the previous proceedings and therefore, the said

proceedings are not binding on him. She also states that the existence of the Samadhi in the suit premises is not denied and therefore, the judgment of the learned Subordinate Judge is liable to be set aside.

6. Learned counsel Mr. G. Sukumar, Special Government Pleader appearing on behalf of the Department submitted that the issue is no longer res integra as that the question had already been concluded against the plaintiff and according him, the factual position that the suit premises is a public religious temple requires no further consideration.

7. We have heard the counsel, gone through the records and considered the matter carefully.

8. The fact that the suit premises is located in the forest area of Andiyur Village and is called 'Malaikaruppaswami Koil' is not in dispute. The Commissioner has filed his reports under Exhibits C.1, C.2 and C.3. The reports are dated 19.4.1984 and 17.12.1984. The Commissioner's reports state that the suit temple is a temple consisting of a number of deities. They are referred to as G.1 to G.5 - the figures of Thavaguru daities, G.6 - the deity of Muni and G.7 - Kannimaswamis. There are platforms for these deities and various animal figures are placed adjoining these deities and spears are also installed. It is stated that there are deities of Thavasiappan and Muneeswaran with a height of 8 feet and 3 feet respectively. Besides, Sivalinga, Nandi and Hari figures are drawn. There are a number of pictures of Hindu Gods and lamps adorning the Temple and Uggiragam. A Sri Chakra picture also is affixed on the wall. It is also found to contain four deities of a height of half feet each and they are called Kannimaswamis. It is also found that more than 50 steel spears appear to have been installed. Besides, there are a number of bells. The temple has got a number of figures of horse, cow, elephant, deer and tiger made of clay.

9. Apart from this factual existence of all the ingredients of a temple, the copy of the judgment in O.S. No.97 of 1937 dated 25.7.1937 produced before us concludes the issue. That was a suit filed by one Karuppuswami for a declaration of his right for possession and management of the Madappalli utensils and other properties of the deities and his right to supervise, conduct and control the regular pooja as well as the Mahasivarathri and Chitra festivals pertaining to the said deities. He has also sought for an injunction to restrain the defendants therein and a direction to deliver possession of Madappalli and other movable properties. The allegations of the plaint conceded that the suit temple was installed in a forest with three deities Thavasiappan, Malaikaruppaswami and Muniappan and that they were established by the plaintiff's ancestors and that the plaintiff was a hereditary trustee entitled to manage and perform the pooja of the said deities. One of the issues framed in that suit was whether the plaintiff was the Poojari and Dharmakarthari of the suit temple. The learned District Munsif found that it was not known as to who installed the deities, but both the parties agreed that they had been in existence for a very long time. Poojas were being conducted every Tuesday and four times in the year when festivals were organized. Besides, there was a Madappalli which was constructed forty years ago on the site, which was given by the plaintiff's

father Manianna Gounder. The age of the plaintiff was 75 years at that time and the learned District Munsif referred to a dispute in reference to the temple pertaining to the year 1919 and also criminal proceedings under Section 145 of the Code of Criminal Procedure. Ultimately, the court found as follows:

"My finding on these issues, therefore, is that the plaintiff is not the Poojari or Dharmakartha of the suit deities and that he was not in management and possession of the temple (shrines) and that the plaintiff is not entitled to the possession of the Madappalli."

The above said judgment was referred by the court below and the certified copy of the said judgment produced before us clearly shows that the dispute was in reference to the very temple and the findings of the existence of deities and the shrine, therefore, clearly shows that it is the temple that was in existence for nearly 100 years.

10. Besides, it is seen that by referring to these proceedings, the learned Sub-Judge has found that the plaintiff has admitted that in the proceedings in O.S. No.97 of 1937 and O.S. No.622 of 1939, the issue that the suit temple is a public temple has been decided. Apart from the above, the plaintiff's son had filed O.A. No.183 of 1976 seeking to declare that he is the hereditary Dharmakartha of the temple and the plaintiff was so declared as per the consent letter given by the father of the plaintiff himself stating that he was not in a position to perform the functions of Dharmakartha. There were further proceedings in O.A. No.164 of 1983 and O.A. No.199 of 1982 wherein additional Dharmakarthas were appointed as the son of the plaintiff was not performing his functions properly. The further findings are that the income of the temple has increased and the additional Dharmakarthas were appointed due to the mismanagement of the son of the plaintiff and therefore, in order to get at the income of temple, the above suit had been filed seeking to declare as if it is not a temple at all.

11. As rightly pointed out by the learned counsel for the respondents, temple has been defined under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 as 'a place, by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as a right by the Hindu community or any section thereof as a place of public religious worship'. The suit temple comes within the requirements of this definition. Admittedly, the temple is under the control of the Department from the year 1958 and the management of the plaintiff's son as the hereditary trustee was subjected to audit and report of the Department. The offerings and the Hundial income were submitted to inspection and audit of the Department and they were opened and the collections counted in the presence of the Auditors of the Department all these years. Besides, it is admitted that people offer tonsures in the temple and regular offerings are also made to the temple by the devotees like pongal. The devotees were given Vibudhi, all of which are important ingredients to show that it is a public temple. In the light of these factual findings, the present plea of the plaintiff that the institution is not a public temple, but it is only a Samadhi cannot be sustained. In our view, the learned Subordinate Judge has

gone into the factual and the legal position in reference to the suit temple and has clearly found that the suit premises is a public religious temple and that the plaintiff has failed to prove that it is only a Samadhi/

12. For the above reasons, we find no grounds to interfere with the judgment of the court below. The appeal fails and it is accordingly dismissed. However, there will be no order as to costs.

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Index : Yes
Internet : Yes

To

1. The Subordinate Judge,
Gobichettipalayam (With Records).

2. The Record Keeper,
V.R. Section,
High Court, Chennai.